

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5025 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI A JADAV

Versus

VAIDYA GAMANLAL J

Appearance:

MR VJ DESAI for Petitioners
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/07/2000

ORAL JUDGEMENT

1. The petitioners , aggrieved by the order passed
by the 18/1/1985 and in review application in that very
case bearing Review Application No. TE.C.A./No. 22/85

which was decided on 14.2.1986, have approached this court with this petition under Article 227 of the Constitution of India.

2. The facts leading to the present litigation can be narrated thus:

2.1 Suo motu proceedings were initiated by the Mamlatdar and ALT, Nadiad under section 32-(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948 which were numbered as 8/76 in respect of survey No. 84/1/2 of Kanjri village, admeasuring 6 acres- 29 Gunthas. The Mamlatdar and ALT, after considering the cases of rival sides, came to the conclusion that provisions of section 32-(1B) of the Tenancy Act would not be applicable to the petitioners' case. The reasonings adopted by the Mamlatdar and ALT for arriving at this conclusion are that in earlier proceedings under section 32G, it was held that the petitioners could not establish that they were tenants of the land in question. It was also observed that by virtue of enactment of Gujarat Devasthan Inam Abolition Act, 1969 which came into force on 15.11.1969 and as on that day, the petitioners were not found to be tenants, they cannot be given benefits of provisions of section 32-(1B) of the Tenancy Act. Aggrieved by this order, the petitioners approached the Deputy Collector by preferring tenancy appeal, No.55 of 1982. The Deputy Collector dismissed the appeal vide order dated 14.12.1982. The order was then carried in revision before the Gujarat Revenue Tribunal which also came to be dismissed by the impugned order dated 18.1.1985 which was sought to be reviewed and the review application also came to be dismissed vide order dated 14.2.1986 and now, the petitioners are before this court.

3. Mr. Desai for the petitioners submitted that all the authorities below have committed an error in not considering the material and relevant factors. He submitted that the authorities have relied on earlier observations of the authorities that the petitioners were not found to be tenants of earlier. Mr. Desai submitted that they were proceedings under section 32-G and therefore, the observations were in respect of possession/tenancy on 1.4.1957; whereas, section 32(1B) contemplates the period between 15.6.1955 and 3.3.1973. It is not the case of the petitioners that they assert this right on basis of they being tenants on 1.4.1957 but according to them, they were tenants who were dispossessed between 15.6.1955 and 1.4.1957 and therefore, they should be given benefit of section 32(1B) of the Act. This aspect has not been considered by the authorities below.

Mr.Desai submitted that section 32 (1B) was inserted in the Act on 3.3.1973.A new right was given which is sought to be asserted by the petitioners which aspect has been overlooked by the authorities below. Mr.Desai has drawn attention of this Court to section 73 of Devasthan Inam Abolition Act,1969 and submitted that by virtue of this provision, provisions of the Tenancy Act as well as of Gujarat Agricultural lands Ceiling Act would be applicable even to Devasthan Inam land by virtue of operation of this Act on 15.11.1969. These aspects have not been considered by the authorities below while deciding the right of the petitioners under section 32(1B) of the Tenancy Act.He,therefore,submitted that petition may be allowed and the orders impugned should be quashed and set aside and the concerned authorities may be directed to hold inquiry on the question-whether petitioners were tenants who were dispossessed between 15.6.1955 and 3.3.1973 and whether on the basis of that finding, benefit of section 32(1B) would be available to the petitioners. Mr.Desai contended that the authorities below have relied on the entry in village form 6 wherein, it is observed that the land was surrendered by the petitioners. Mr. Desai contended that if section 32(1B) is considered, surrender has to be in accordance with law ,i.e. as contemplated in section 15 of the Act. No such proceedings have taken place and there is no reference to any such proceedings if any, in the entry. Mr.Desai,therefore,submitted that this is no surrender, in the eye of law.In support of his contention, Mr.Desai placed reliance on the decision of this court in Patel Prabhudas Madhavdas vs. Bai Shivkore wd/o Bhudar Ranchhod, 33 (1) GLR, 333

4. Mr. A.J.Patel, learned advocate for the respondents has opposed this petition.He contended that the case of the petitioners has been considered by the authorities below in its correct perspective. According to Mr.Patel, the entry made in the village form 6 indicates that there was voluntary surrender of land and,therefore, they cannot be said to have been dispossessed.Mr.Patel placed reliance on the decision of the Apex court in Dhonduram Tatoba Kadam vs. Ramchandra Balwantrao Dubal, 36 (1) GLR, 344,wherein the word 'dispossession' has been interpreted. According to Mr.Patel, unless dispossession is without process of law and is shown to be forceful, it has to be presumed that it was voluntary.Mr.Patel also placed reliance on the decision of this Court in .Jashbhai M Patel vs. Dhulabhai Lakhabhai, 38(2) GLR 1196.Mr. Patel contended that property was held to be Devasthan Inam property

earlier .That part is not in dispute and therefore, those provisions may not be of benefit to the petitioners.As regards section 23, Mr.Patel submitted that the authorities below have observed that the Act came into force on 15.11.1969.The provision of section 32 (1B) was introduced in Tenancy Act on 3.3.1973. Between these two dates, the petitioners were not tenants and were not dispossessed.The authorities below have,therefore, rightly denied the benefit of Section 32 (1B) to the petitioners. He submitted further that there are concurrent findings of all the authorities below and this court may not interfere in exercise of powers under Article 227 of the Constitution of India and the petition may be dismissed.

5. Having regard to rival side contentions, before advertng to the facts, certain legal aspects may first be stated. The petitioners assert their right under section 36 (1B) of the Tenancy Act.The said provisions are as under :

"32 (1B): Where a tenant who was in possession of land on the appointed day and who,on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than in the manner provided in section 29 or any other provision of this Act, is not in possession of such land or any part thereof and such land or part thereof is in the possession of the landlord or his successor in interest on the said date and such land or part thereof is not put to a non-agricultural use on or before the said date,then the Mamlatdar shall,notwithstanding anything contained in the said section 29 or any other provision of this Act, either suo motu or on an application of the tenant made within the prescribed period, hold an inquiry and direct that such land or, as the case maybe, part thereof shall be taken from the possession of the landlord or ,as the case may be, his successor in interest, and shall be restored to the tenant; and thereafter, the provisions of this section and sections 32A to 32R (both inclusive) shall, sofar as they may be applicable,apply thereto, subject to the modification that the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or, as the case may,part thereof is restored to him;

6. It would be appropriate to note that the appointed day referred to in the said provisions is 15.6.1955 and the specified date referred to in the said provision is 3.3.1973.

7. According to the petitioners, even as per entry No.4180 in village form No.6 made on 5.1.1957, they were in possession upto 5.1.1957 i.e. after 15.6.1955. If that entry is seen, it states that tenants have voluntarily surrendered possession and, therefore, their names are deleted from the record.

8. The question that is agitated is whether this surrender can be said to be voluntary in the eye of law. According to the petitioners, if section 32 (1B) is seen, this is no surrender and, therefore, the petitioners can be said to have been dispossessed between the relevant dates. This provision has been considered by this court in the case of Prabhudas Madhavdas (supra). It was observed thus:

"However, under sec. 15 of the Bombay Tenancy Act, as it stood at the relevant time, in 1962-63, the protected tenant had himself to apply in writing to the Mamlatdar under the Tenancy Act that he wanted to surrender his tenancy rights. Thereafter, the entire gamut and procedure of sec. 15 (2) had to be followed and then only it can be said that the concerned tenant had surrendered his tenancy rights. The petitioner's father had never applied under sec. 15 (2) of the Act to surrender his tenancy rights nor had the concerned Mamlatdar held any inquiry pursuant to such application and verified the surrender to be proper. The only mutation proceedings passed purely under the Land Revenue Code. It is obvious, therefore, that when the respondent obtained possession of the land from the petitioner's father in 1962-63 and thereafter remained in possession thereof in personal cultivation, she did not obtain possession of the land from the petitioner's father pursuant to any valid order of the Mamlatrdar under sec. 15 (2) of the Tenancy Act. In fact, surrender proceedings had never taken place. It must therefore be held that the petitioner's father had never surrendered tenancy rights in favour of the respondent. But it appears that by some

private arrangement outside the court, the petitioner's father seems to have handed over possession of the land for cultivation to the respondent in 1962-63, a few years after the deemed purchase of the land was postponed by an earlier order of the Mamlatdar. Such a private arrangement between the parties cannot have any legal efficacy. It is now well settled that any private arrangement between the landlord and tenant which does not go through the gamut and filtering process of sec. 15 of the Tenancy Act viz. surrender proceedings, has no legal efficacy and the tenancy of the tenant does not get terminated by such a private arrangement between the parties. Once that finding about termination of tenancy is found patently erroneous in law, it would be obvious that the provisions of section 32(1B) would squarely apply to the facts of the present case".

9. Against this, it is contended by the respondent that the term 'dispossession' has been interpreted by the Apex court in Dhondiram Kadam (supra) wherein it has been observed that voluntary giving up of possession does not amount to dispossession unless the law provides for it. 'Dispossession' according to Black's Law Dictionary means- 'To oust from land by legal process; to eject, to exclude from reality'. It was held that dispossession should have been, therefore, either by legal process or by physical act of exclusion.

9.1 It was, therefore, contended on behalf of the respondent that in the instant case, dispossession is neither by legal process nor by physical act of exclusion as can be seen from entry No. 4180 and, therefore, section 32 (1B) would not be attracted.

10. It is not possible to accept the contention raised on behalf of the respondent for the reason that the authorities below have proceeded on the premise that in earlier proceedings, the petitioners were not found to be tenants. Those proceedings were under Section 32G and there, the relevant date was 1.4.1957 whereas, for Section 32 (1B) relevant dates are 15.6.1955 to 3.3.1973.

10.1 Apart from this, the decision of the Apex court relied upon by the respondent is rendered in respect of Bombay Tenancy and Agricultural Lands Act, 1948 and as rightly submitted by Mr. Desai, the language of section 32 (1B) as applicable to Gujarat, is different than the

language adopted in Maharashtra Act. In the Maharashtra Act, section 32 (1B) was added in 1969 in Chapter III. The words "otherwise than in the manner provided in section 29 or any other provision of this Act" do not appear in the Maharashtra Act. The words "any other provision of the Act" shall have reference to section 15 of the Act. This court in Prabhudas Madhavdas (supra) has dealt with a very similar situation and has observed that surrender by private arrangement cannot have any legal efficacy. Any private arrangement which does not go through the gamut and filtering process of section 15 of the Tenancy Act viz. surrender proceedings, has no legal efficacy and tenancy of tenant does not get terminated by such private arrangement between the parties. In this view of the matter, the contention raised by the petitioners deserves acceptance.

11. It has also been contended by Mr. Patel that Devasthan Inam Abolition Act came into force from 15.11.1969. Therefore, section 23 of that Act would become operative on that day. On that day, the petitioners cannot be termed as deemed purchasers as they were not in possession of the land as tenants and, therefore, the petitioners' contention cannot be accepted. He submitted that section 32 (1B) was introduced on 3.3.1973. The petitioners were not in possession of land between 15.11.1969 and 3.3.1973 and do not even claim to be so. The petitioners do not come with case of dispossession during these dates. Section 23 of The Devasthan Inam Abolition Act came in force on 15.11.1969 and, therefore, the authorities below have rightly rejected the case of the petitioners. It is not possible to accept this contention on behalf of the respondent for the reason that section 32 (1B) was made operative on 3.3.1973 i.e. on a date when Devasthan Inam Abolition Act was operative and section 23 was in force. On that day, a right was given when Tenancy Act was applicable to Devasthan Inam property. As a result, by virtue of section 32 (1B) of Tenancy Act, a benefit can be claimed by petitioners. It will have to be examined in the instant case whether the petitioners would fall within these two dates stipulated in section 32 (1B) between 15.6.1955 and 3.3.1973, which has not been considered by the authorities below. The authorities below have proceeded altogether on different premise that in 1969, the petitioners were not in possession or they were not dispossessed. In view of the fact that section 32 (1B) was introduced on 3.3.1973 for the first time and the authorities have not considered the rights of the petitioners in the perspective, as discussed above.

12. For the foregoing reasons, petition deserves to be allowed. Impugned orders dated 18.1.1985 and 14.2.1986 passed by the GRT are hereby quashed and set aside. The matter is remanded to the Mamlatdar and ALT for holding fresh proceedings under section 32 (1B) of the Tenancy Act in light of the above discussion. It would be open for the parties to raise all legal contentions before him and the Mamlatdar and ALT shall decide the question without being influenced by any observations which might have been made by this court in this judgment. Rule made absolute. No costs.

(A.L. Dave,J.)

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